

U.S. Application No. 10/797,532, filed March 10, 2004  
Attorney Docket No. 14883US02  
Amendment dated January 30, 2008  
In Response to Office Action mailed August 30, 2007

### **REMARKS**

Claims 1-56 are pending. Claims 1-56 are rejected.

The Examiner has objected to the drawings. In particular, the Examiner is requesting that the reference numerals be supplemented with words. However, Applicants believe there is no such requirement to supplement reference numerals with words. In addition, the Examiner has not provided any citation to the U.S.C., M.P.E.P. or the C.F.R. in support of the objection. In particular, Applicants respectfully request that the Examiner provide a citation to the U.S.C., M.P.E.P. or C.F.R. that states that there is a preference for words over reference numerals. It is respectfully submitted that the Examiner might be misinterpreting the meaning of “descriptive legends”. However, the Examiner is respectfully requested to provide support for such an interpretation of “descriptive legends”. For at least the above reasons, it is respectfully requested that the objection be withdrawn with respect to the drawings.

The Examiner has objected to the use “adapted to” in claim 1. In particular, the Examiner notes that “adapted to” is not a positively recited element. The Examiner suggests that the terms be deleted. Although Applicants believe that there is ample case law supporting the use of “adapted to”, Applicants have followed the suggestion of the Examiner in this instance and deleted “adapted to”. Accordingly, in claim 1, “is adapted to merge” has been replaced, without prejudice, with “merges”. It is therefore respectfully requested that the Examiner withdrawn the objection with respect to claim 1.

Applicants have also amended claims 30 and 31 to correct a noted informality, in particular, a misspelling. Accordingly, in claims 30 and 31, “seemlessly” has been replaced with “seamlessly”.

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Claims 1-12, 16-18, and 21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,757,725 B1 ("Franz").

To expedite prosecution and to further clarify the subject matter therein, Applicants have amended independent claim 1.

With respect to claim 1, the Examiner is alleging that management NIC 210 corresponds to the NIC. Applicants have further clarified that subject matter in claim 1 by noting that "a network interface card (NIC) that comprises a host NIC". In addition, claim 1 recites "wherein the management device is not coupled to a management device NIC, and wherein the management NIC and the host NIC are different NICs". As alleged by the Examiner, the management device is coupled to management NIC 210.

The attention of the Examiner is respectfully drawn to M.P.E.P. § 2173.05(i) with regard to Negative Limitations. "The current view of the courts is that there is nothing inherently ambiguous or uncertain about a negative limitation." M.P.E.P. § 2173.05(i).

Accordingly, the anticipation rejection cannot be maintained with respect to claim 1 and its rejected dependent claims (i.e., claims 2-12, 16-18, and 21).

Claims 13-15, 19 and 20 stands rejected under 35 U.S.C. § 103(a) based, at least in part, on Franz. It is respectfully submitted that, at least in view of the amendments made to claim 1, that a *prima facie* conclusion of obviousness is no longer presented.

"The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." M.P.E.P. § 2142 (italics in the original).

Accordingly, it is respectfully requested that the obviousness rejection based, at least in part, on Franz be withdrawn with respect to the rejected claims (i.e., claims 13-15, 19 and 20) that depend from amended independent claim 1.

Claim 37-40 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Franz.

To expedite prosecution and to further clarify the subject matter therein, Applicants have amended independent claim 37.

Claim 37 recites “providing access to and from a network for a management device via a host NIC, the management device not being coupled to a management device NIC, the host NIC and the management device NIC being different NICs, the management device only receiving management traffic”. In addition to the similar arguments made with respect to claim 1 and Franz, Applicants respectfully draw the attention of the Examiner to “the management device only receiving management traffic”.

It is therefore respectfully requested that the anticipation rejection be withdrawn with respect to claim 37 and its rejected dependent claims (i.e., claims 38-40).

Claim 51-55 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Franz.

To expedite prosecution and to further clarify the subject matter therein, Applicants have amended independent claim 51.

Claim 51 recites “the local manager not having a dedicated management NIC coupled to the network, any of the plurality of host NICs being selectable by the local manager”.

It is therefore respectfully requested that the anticipation rejection be withdrawn with respect to claim 51 and its rejected dependent claims (i.e., claims 52-55).

Claim 56 stands rejected under 35 U.S.C. § 103(a) based, at least in part, on Franz. It is respectfully submitted that, at least in view of the amendments made to claim 51, that a *prima facie* conclusion of obviousness is no longer presented.

“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” M.P.E.P. § 2142 (italics in the original).

Accordingly, it is respectfully requested that the obviousness rejection based, at least in

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part, on Franz be withdrawn with respect to claim 56 that depends from amended independent claim 51.

Claims 22-36 stand rejected under 35 U.S.C. § 103(a) based, at least in part, on Franz.

To expedite prosecution and to further clarify the subject matter therein, Applicants have amended independent claim 22.

Claim 22 recites “wherein, if the first NIC operates normally, network traffic does not pass through the manager unless the network traffic is management traffic, and wherein, if the first NIC fails, the network traffic does not pass through the manager unless the network traffic is management traffic”.

Franz does not teach at least these elements. In Franz, it is alleged by the Examiner that if NIC 95 fails, then system 100 uses management NIC 210. As illustrated in FIG. 2, system 100 sends network traffic through the alleged manager 150 and management NIC 150.

Claim 22 stands rejected under 35 U.S.C. § 103(a) based, at least in part, on Franz. It is respectfully submitted that, at least in view of the amendments made to claim 22, that a *prima facie* conclusion of obviousness is no longer presented.

“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” M.P.E.P. § 2142 (italics in the original).

Accordingly, it is respectfully requested that the obviousness rejection based, at least in part, on Franz be withdrawn with respect to claim 22 and its rejected dependent claims (i.e., claims 23-36).

Claims 41-50 stand rejected under 35 U.S.C. § 103(a) based, at least in part, on Franz.

To expedite prosecution and to further clarify the subject matter therein, Applicants have amended independent claim 41.

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Claim 41 recites “generating a command in the management device, the management device not having a dedicated management NIC, the management device sharing a selected host NIC with a host, the management device not being exposed to general network traffic’.

Claim 41 stands rejected under 35 U.S.C. § 103(a) based, at least in part, on Franz. It is respectfully submitted that, at least in view of the amendments made to claim 41, that a *prima facie* conclusion of obviousness is no longer presented.

“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” M.P.E.P. § 2142 (italics in the original).

Accordingly, it is respectfully requested that the obviousness rejection based, at least in part, on Franz be withdrawn with respect to claim 41 and its rejected dependent claims (i.e., claims 42-50).

#### Conclusion

Applicants do not necessarily agree or disagree with the Examiner’s characterization of the documents made of record, either alone or in combination, or the Examiner’s characterization of recited claim elements. Furthermore, Applicants respectfully reserve the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

With respect to the present application, Applicants hereby rescind any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is

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in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: January 30, 2008

Respectfully submitted,

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